

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VASILY ERMICHINE,)
Petitioner,)
)
v.) C.A. No. 18-244 Erie
)
WARDEN OF FCI McKEAN,)
Respondent.)

MEMORANDUM ORDER

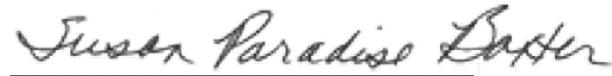
This action for habeas corpus relief was received by the Clerk of Court on August 27, 2018. In his habeas petition, Petitioner seeks relief under 28 U.S.C. § 2241, pursuant to the “savings clause” of 28 U.S.C. 2255(e), which allows a federal prisoner to challenge the validity of his underlying conviction where it “appears that the remedy by [§2255 petition] is inadequate or ineffective to test the legality of his detention.” The petition was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On June 5, 2019, Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that the petition be dismissed because it fails to satisfy the requirements of 28 U.S.C. § 2255(e). [ECF No. 16]. In particular, Judge Lanzillo concluded that “none of [Petitioner’s] claims are premised upon the theory that he is being detained for conduct that has been rendered non-criminal by an intervening decision of statutory construction issued by the Supreme Court.” (*Id.* at p. 9). Petitioner has filed Objections to the R&R contending that he is actually innocent, but failing to show, or even argue, that he is being detained for conduct that has been rendered non-criminal by an intervening Supreme Court decision.

After *de novo* review of the petition and documents in the case, together with the report and recommendation and Petitioner's objections thereto, the following order is entered:

AND NOW, this 8th day of July, 2019,

IT IS HEREBY ORDERED that the within petition for a writ of habeas corpus is DISMISSED, with prejudice, and the report and recommendation of Magistrate Judge Lanzillo, issued on June 5, 2019 [ECF No. 16], is adopted as the opinion of this Court. As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."


Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge

All parties of record